



NATIONAL ASSOCIATION OF REALTORS®

LEGAL AFFAIRS

The Voice for Real Estate®

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December 23, 2004

Federal Election Commission
999 E Street, N W
Washington, DC 20463

Attn Jeff S Jordan, Supervisory Attorney
Complaints Examination & Legal Administration

RE MUR 5620

Dear Mr Jordan

This letter is in response to yours dated December 8, 2004 and received by the National Association of REALTORS® ("NAR") on December 14, 2004 I enclose a Statement of Designation of Counsel designating me as counsel to NAR in this matter

The complainant in this matter alleges that he received several flyers that "appear to me to advocate the candidacy of Richard Burr" and were "paid for by the National Association of REALTORS® " He also notes that he is not a member of NAR and asserts his contention that "any reasonable individual would consider the act of producing and distributing this flyer to be a political contribution to Mr Burr " Enclosed with the complaint are copies of six different printed communications ("flyers") that mention Richard Burr For the reasons set forth below, the production and distribution of these flyers does not violate the Federal Election Campaign Act of 1971, as amended ("Act"), and NAR respectfully requests that the Commission and Commission staff determine that no action be taken against NAR in response to this complaint, and dismiss this matter without further action

The flyers included with the complaint are of two different types The first group, consisting of the four flyers entitled "The Wedding was Expensive Enough," "The American Dream is Turning into a Reality," "A little nicer yard, A little bigger house," and "Richard Burr is Opening Up Homeownership to More Families," each bear the identifying notice "Paid for by the National Association of REALTORS® and authorized by the North Carolina Association of REALTORS® " NAR paid all costs associated with the production and distribution of these four flyers The North Carolina Association of REALTORS® (NCAR) was aware of and supportive of the distribution of these flyers by NAR, but did not participate in any with their production and distribution, and, in particular, did not pay any portion of the expenses thereof Inspection of the text of each flyer readily reveals that these flyers do not contain any words of express



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advocacy whatsoever of Mr Burr's candidacy for election to the Senate Absent such words of express advocacy, these flyers are not contributions or expenditures under the relevant provisions of the Act¹, and are therefore not subject to the prohibitions or limitations applicable under the Act to contributions or expenditures Thus, NAR, an Illinois not-for-profit corporation, may bear the costs of producing and distributing these flyers without violating the Act

The only possible exception to the conclusion above would be if these flyers could be deemed "Coordinated Communications" as defined in §109 21 of the Commission's Regulations, since in such case §109 21 would deem NAR's expenditures to produce and distribute these flyers to be in-kind contributions to the Burr campaign However, neither the complaint by which this MUR was initiated nor the FEC's letter transmitting that complaint to NAR alleges that these flyers were coordinated in any way with the Burr campaign, or even suggests any facts inferring that NAR's production and distribution of these flyers might satisfy the "conduct standards" of §109.21(c) In fact, NAR carefully developed, produced and distributed these flyers in a manner that at all times avoided the conduct described in that subsection, or that might otherwise cause or permit the creation and distribution of the flyers to be any way coordinated with the Burr campaign Thus, NAR's distribution of these flyers is not prohibited as an unlawful in-kind contribution by a corporation under §§ 109 21(b) or 109 22

The second group of flyers included with the complaint consists of the two entitled "Make Waves" and "Yours in the Voice of Freedom " These flyers each contain words of express advocacy in support of Richard Burr, and in each case display a disclaimer/non-authorization notice as required by §§110 11(b)(3), 110 1(c) (2) and 110 11 of the Commission's Regulations As indicated in the notice, all costs of production and distribution of these flyers were paid by the National Association of REALTORS® Political Action Committee, NAR's separate segregated fund (also known as the REALTORS® Political Action Committee, or RPAC)² None of the costs associated with the production and distribution of these flyers were paid by NAR or by the North Carolina Association of REALTORS® Moreover, these flyers were created and distributed at RPAC's sole expense as an independent expenditure in compliance with the requirements of §431(17) of the Act and §§100 16 and 109 21 of the Commission's Regulations, and the complaint does not include allegations or suggest any facts otherwise As in the case of the first group of flyers, RPAC carefully developed, produced and distributed these flyers in a manner that at all times avoided any conduct that would constitute or even appear to constitute coordination with the Burr campaign, as described in §109 21(c) of the Regulations Thus, no limit applies to the amount expended by RPAC in connection with these flyers All the costs of these flyers were duly and properly reported as independent expenditures on RPAC's reports to the FEC, in accordance with the independent expenditure filing requirements of the Regulations

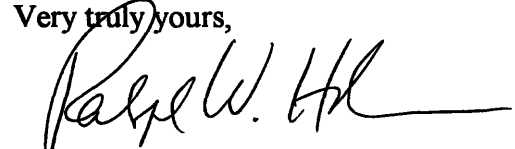
For the foregoing reasons, I respectfully request on behalf of the National Association of REALTORS® that the Commission and Commission staff determine that no action be taken against NAR or RPAC in response to this complaint, and that it be dismissed without further

¹ See, e g , *Fed Election Comm'n v Christian Action Network, Inc* 110 F 3d 1049 (4th Cir , 1997), *Virginia Society for Human Life, Inc v Fed Election Comm'n*, 263 F 3d 379 (4th Cir 2001), and *Faucher v Fed Election Comm'n*, 928 F 2d 468(1st Cir 1991)

² RPAC is a registered multi-candidate federal political committee, FEC Registration No C00030718

action I would be happy to discuss with you the information set forth above, or to provide any other information or material which will assist you in reaching this conclusion Please feel free to contact me at your convenience at 312/329-8375

Very truly yours,



Ralph W Holmen
Associate General Counsel

RWH/cp

Enclosures

cc Laurene K Janik, General Counsel
Walt Witek, Vice President, Government Affairs
Lisa Friday Scott, Senior Public Advocacy Representative, Government Affairs
Scott Reiter, RPAC Program Representative, Government Affairs



FEDERAL ELECTION COMMISSION
999 E Street, NW
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**Statement of Designation of Counsel
(Respondent/Witness)**

Name of Counsel: Ralph W. Holmen

Firm: National Association of REALTORS

430 N. Michigan Ave., Chicago, IL 60611

Telephone: (312) 329-8375

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The above named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission

12-21-04
Date

Laurene K. Janik
Signature

Name (Print): Laurene K. Janik

Address: 430 N. Michigan Ave.

Chicago, IL 60611

Telephone: Home

Business (312) 329-8371

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation.

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